

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 403

Call to Order: By **CHAIRMAN SHERM ANDERSON**, on March 27, 2003 at 11:00 A.M., in Room 155 Capitol.

ROLL CALL

Members Present:

Sen. Sherm Anderson, Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Bob Keenan (R)
Rep. Michael Lange (R)
Rep. Donald Steinbeisser (R)

Members Excused: Sen. Bob DePratu (R)

Members Absent: None.

Staff Present: Eddye McClure, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp in these minutes appears at the end of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: HB 403, 3/25/2003
Executive Action:

SEN. ANDERSON explained the reason for the Senate amending HB 403. He stated that they felt they needed to better define who they were talking about regarding the 50/50 relationship addressed in the bill. He continued that they felt that since the general contractor was normally the entity responsible for all subcontractors on a project that the general contractor should be the responsible party.

REP. KEANE pointed out that by putting in the word "general" they had virtually eliminated the subcontractors from the bill. He went on to say that the purpose of the bill was to protect the subcontractors. **REP. KEANE** expressed his desire to have the word "general" taken out of the bill.

REP. LANGE stated the general contractors were concerned that 1) when they sublet work they did not want have to babysit the subs and, 2) if the subs were specialty contractors and could not find qualified Montana workers to perform the work, they did not want to have to deal with the Department of Labor to obtain a waiver. He went on to say that the subs had to obtain a waiver anyway to cover themselves. He continued that it was a mutual worry to both as they felt they were having to take on added responsibilities that were not necessary.

SEN. COCCHIARELLA stated that the bottom line issue in the bill was hours worked versus people. She continued that she thought the Department of Labor was going to write a rule that would interpret hours worked and how it would apply.

John Andrew, Department of Labor, explained that the rule the Department proposed talked about man hours. He continued that it talked about man hours on the entire project rather than the responsibility of each individual contractor on the project.

SEN. ANDERSON stated that the premise was to define it as general contractor because that would be the entire project versus the Department having to work with each individual subcontractor. He pointed out that he had heard from the general contractors that they were responsible for the entire project, therefore, they did not understand why the Department would want the responsibility of singling out the subs and dealing with them in a separate fashion.

REP. LANGE discussed the large contractors, and the differences between sizes of projects performed. He stated that in those instances the general contractors would never agree that the subcontractors should not share in the responsibilities.

SEN. ANDERSON asked Mr. Andrews if general contractors could delineate themselves and put the responsibility on the subcontractors. **Mr. Andrews** responded that historically they go to each contractor on the project and assure that they have the fifty percent preference on the job. He continued that it was easy to enforce and easy to explain. **Mr. Andrews** explained that they went to the subcontractors, told them what the law said and the percentage of their workers that must be Montanans, without the general contractors ever becoming involved. He remarked that ultimately the general contractors were responsible, but it was easier for them to deal with the subs in assuring compliance.

REP. LANGE clarified the definition of a general. He explained that over the last twenty years the general contractors had become architects or engineering firms. He continued, stating that the generals stay in the office and adding them to the mix created an additional burden on them.

SEN. ANDERSON asked John Andrews why they needed the bill. **Mr. Andrews** deferred to Jerry Driscoll, Montana AFL-CIO. **Mr. Driscoll** stated that the bill would clarify the rule so that everyone involved would know they were talking workers not man hours. He then gave examples to demonstrate what he was talking about.

SEN. ANDERSON asked Mr. Andrews how they would administer the bill as it came out of the House. He further asked if they were talking fifty percent of the total workforce or fifty percent of each individual contractor or subcontractor. **Mr. Andrews** referred to existing law in Subsection 1, Line 16 where it talked about fifty percent of the work being performed. Then on Line 24 it talked about fifty percent of the workers. **Mr. Andrews** pointed out that was where the law was not clear and gets the discussion going, time versus bodies. He indicated that was the clarification they were looking for. He stated that as the bill came from the House they would have continued to enforce the law the way they historically had which was each contractor on the project was responsible for ensuring that fifty percent of their workers were Montana residents.

SEN. ANDERSON stated the issue at hand was whether they were talking fifty percent of the total workforce or fifty percent of each individual contractor on the job.

REP. KEANE stated that it was not fair for subcontractors to not have to comply with the law. He indicated that the subcontractors were the ones they wanted to make sure were hiring at least fifty percent Montana residents. He continued that in order to get the bill back where the Department could enforce it

they needed to take the word "general" out and leave it as contractors. He went on to say that the other part of the bill, the way it came from the House, cleared up that they were talking about workers not hours.

SEN. ANDERSON asked about specialty workers being all out-of-state workers and gave the capital project as an example. There was general discussion among the Committee members regarding specialty workers, how they are covered under statute and variances available to them. They went on to discuss the variances and who would be responsible for obtaining the variance, the general contractor or subcontractor. The Committee then talked about the complications involved when contractors negotiated with out-of-state entities to perform work and did not apply for any kind of variance and if the Department could have informed them that they could not work unless they employed fifty percent Montana residents. **Mr. Andrews** informed the Committee that generally no one obtained variances and the issue never came up unless someone complained. They went on to discuss where complaints could or would come from.

REP. KEANE asked if Margaret Morgan, of the Independent Electrical Contractors, could speak to the Committee. **Ms. Morgan** stated the way the language had been amended hurt their subcontractors. She went on to say that from their perspective it was a bad amendment and it needed to be changed.

REP. LANGE gave an example of how the change could hurt both the general contractors and the subcontractors.

REP. KEANE gave another scenario of how the fifty percent rule helped Montana residents by providing them with a vehicle to take jobs first, before out-of-state workers could be hired. He went on to say that it had worked in the past the way it was and that the amendment totally changed the law with the addition of the word "general."

SEN. ANDERSON asked Mr. Andrews if there was noncompliance with the rule if they would halt just the subcontractor or the entire project. **Mr. Andrews** responded that there was no authority in the law for the Department to stop a project.

SEN. ANDERSON asked Mr. Andrews how they handled the noncompliance. **Mr. Andrews** replied that the most they could do was work with the contractor, and advise them of the law. He went on to say that at some point they would go to the contracting agency and advise them that under another part of the

law that some of their payment could withhold for noncompliance with the law.

SEN. ANDERSON asked Mr. Andrews how they would withhold pay from the sub as their payments would go to the general. **Mr. Andrews** stated that the contracting agency was the one that had the authority to withhold up to \$1,000 under the terms of the contract. He continued that they would go to the general agency. He went on to say that if a contractor, willingly and knowingly ignored the requirements of the law they could be subject to debarment proceedings.

SEN. ANDERSON asked Mr. Andrews if he meant the subcontractor even though the general was responsible for the job. **Mr. Andrews** responded that in current practice, since they are holding each contractor responsible, they would not go to the general for responsibility. He continued that ultimately the general could have some responsibility. However, if debarment were to occur they would go to the offending contractor not the general.

SEN. COCCHIARELLA asked Mr. Andrews what he meant by debarment. **Mr. Andrews** replied that debarment existed in both state and federal law. He stated it was a local aggravated violation on a public works project. He continued if they were found in violation they could be band from working on public works projects.

SEN. COCCHIARELLA stated that to her the issue was how they would be applying the two provisions. She understood that they were going to write a rule about hours worked. She went on to say that they had been told in Committee that hours worked would be impossible to track and keep track of. She asked if they could agree that what they wanted was to keep it to the number of workers not hours.

SEN. ANDERSON replied that he did not think there was ever any question, that they all wanted it to be the number of workers nor hours.

SEN. COCCHIARELLA asked if the only issue left the was the word "general."

{Tape: 1; Side: A; Approx. Time Counter: 0 - 28.8}

REP. KEANE stated that if they took the word "general" out he would be happy.

Eddye McClure, Legislative Services, explained the definition of the word "contractor" for the Committee from statute. She went

on to indicate that there was also a definition for the word "employer."

SEN. COCCHIARELLA asked Ms. McClure in what section of the code she could find the definition. **Ms. McClure** responded that it was found in 18-2-401, Part IV.

Mr. Andrews stated that the definition was taken from the Department's rules but in reality the word "employer" should not have been there. He continued that employers were those engaged in non-construction services, therefore, their rule had a word in it that it should not have.

Ms. McClure stated that if they simply used the word contractor, the definition in statute would work.

SEN. ANDERSON asked if they should insert language in the bill that would protect general contractors from being responsible for non-compliance of the rule by subcontractors. The question led to discussion by the Committee as to what would happen if there were no subs. It was stated that if they simply used the word "contractor" it would solve the problem.

REP. KEANE explained that they were not trying to exclude people from the law they were trying to make the law apply to workers and not to hours worked. He went on to say if a contractor had one or more subs the original contractor would not be obligated for the subs.

REP. KEANE asked if he was correct in that the Department could not stop the work. **Mr. Andrews** responded that they could not stop the project. He continued that they would communicate with the general that one of their subs was out of compliance, but it would be the sub that they would go after.

SEN. ANDERSON asked Mr. Andrews if a subs noncompliance could have an affect on the entire project thereby affecting any other subs involved in that project. **Mr. Andrews** replied that it could have that effect.

SEN. ANDERSON pointed out that the kind of language he was looking for would state that the prime contractor was not responsible for their subcontractors pertaining to the statute.

SEN. COCCHIARELLA apprised SEN. ANDERSON that they had not had an issue with how the rule was applied by the Department in the past. She went on to say that this was not the issue of the bill. The issue of the bill had to do with the language that was changed from fifty percent of the hours worked to fifty percent

of the workers. Therefore, "Why was there an issue now, why not leave the language in the form it was before, so it would still be applied as it always had been applied, and just change the language on the hours? Why mess with what had not been wrong?"

SEN. ANDERSON asked if they were talking about total workers or each individual entity.

A general discussion of potential problems regarding possible delays on projects ensued.

Cary Hagreberg, Montana Contractor's Association, pointed out that his organization was responsible for the amendment that was put on in the Senate. He explained part of the problem of out-of-state contractors getting the jobs had to do with the bidding process and the cost of the projects. He continued that his people were concerned about the practicality of administering the law. He went on to say that they did not want to be in a position of being the ones forced to enforce it either. **Mr. Hagreberg** reiterated the point that at some point the cost enters into the matter.

REP. KEANE asked Mr. Andrews about the Bozeman project and the problems encountered there. **Mr. Driscoll** informed the Committee of the contractor involved and the circumstances surrounding the problem. He pointed out that what they were trying to do was to ensure that Montana workers were hired for the jobs as long as they were qualified to do the work involved.

SEN. COCCHIARELLA indicated she felt leaving the word "general" in the bill would make it almost impossible for a general to keep track of and be responsible for a job.

REP. LANGE informed the Committee that it did not matter whether the workers came from out-of-state or Montana they would be paid the same wages. He explained that prevailing wage rates were the same no matter what. He went on to say that the crux of the bill was to put the jobs into Montanans hands first.

Jerry Driscoll explained the bidding process and how it works to the Committee.

SEN. ANDERSON proposed a conceptual amendment. The Committee discussed the proposed language for the amendment.

REP. LANGE asked Mr. Hagreberg if he was concerned that should a violation occur the Department would take an action against the violator that would result negatively on the general contractor.

Mr. Hegreberg replied that they were worried there could be delays and that there could be a suspension in the work while they located Montana workers. He suggested that they put something in the statute that would assure the general contractors that they would not have to worry about delays because of a subcontractors noncompliance.

REP. LANGE asked Mr. Andrews to address Mr. Hegreberg's concerns. **Mr. Andrews** gave an example of what had happened on the Bozeman project. He concluded by indicating that it was not their intention to hold any project up. He continued that their normal practice was to deal directly with the individual contractors.

Ms. McClure informed the Committee that if they intended to add something to the bill, outside of the amendments in question, they would have to have a Free Conference Committee. She went on to say they would have to dissolve the Conference Committee and appoint a Free Conference Committee to address the bill itself.

Mr. Andrews suggested adding the word "each" before the word "contractor" to insure that they were only dealing with the contractor in question. He went on to say using the word "each" would solve the problem of whether they were talking about subcontractors or a general contractor doing all of the work on a project.

Ms. McClure asked the Committee if they wanted to use the language "each individual contractor" to ensure clarity.

There was further discussion on the language to be inserted to solve the amendment problem.

SEN. ANDERSON expressed his opinion that if they inserted the words "each individual contractor" in the bill it would cover all of the concerns that he had.

Mr. Andrews informed the Committee that should they receive complaints about a subcontractor, they did inform the general contractor of those complaints.

REP. KEANE stated that they needed to take the word "general" out of the bill.

Ms. McClure explained the proposed new amendments and how they would change the bill.

There was further discussion on the proposed language changes.

REP. KEANE asked Ms. McClure if the proposed language changes would be allowed under the Conference Committee rules. **Ms. McClure** responded that as long as the were within the amendment they could make the changes.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 27.5}

Ms. McClure clarifies the proposed amendment.

Motion/Vote: **REP. KEANE** moved **THE AMENDMENT TO HB 403 BE ADOPTED**. Motion carried 6-0 by voice vote with **SEN. DEPRATU** voting aye by proxy.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.5}

ADJOURNMENT

Adjournment: 12:00 P.M.

SEN. SHERM ANDERSON, Chairman

MARI PREWETT, Secretary

ML/SA/

EXHIBIT (cch65hb0403aad)